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SENATE BILL 952

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

H. Diane Snyder

AN ACT

RELATING TO PROCUREMENT; PROVIDING FOR DEFINITIONS OF  
CONSTRUCTION MANAGER AT-RISK AND MAXIMUM ALLOWABLE CONSTRUCTION  
COST; PROVIDING FOR CONSTRUCTION MANAGER AT-RISK CONTRACTS;  
PROVIDING FOR SELECTION AND AWARD OF CONSTRUCTION MANAGER AT-  
RISK CONTRACTS; PROVIDING RESPONSIBILITIES OF CONSTRUCTION  
MANAGERS AT-RISK.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-40.1 NMSA 1978 (being Laws 1997,  
Chapter 171, Section 1) is amended to read:

"~~Section~~ 13-1-40.1. ~~[DEFINITION]~~ DEFINITIONS- -  
CONSTRUCTION MANAGEMENT ~~[AND]~~, CONSTRUCTION MANAGER,  
CONSTRUCTION MANAGER AT-RISK AND MAXIMUM ALLOWABLE CONSTRUCTION  
COST. - -

A. "Construction management" means consulting

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1 services related to the process of management applied to a  
2 public works project for any duration from conception to  
3 completion of the project for the purpose of controlling time,  
4 cost and quality of the project.

5 B. "Construction manager" means a person who acts  
6 as an agent of the state agency or local public body [for]  
7 subject to a construction management [for whom the state agency  
8 or local public body shall assume all the risks and  
9 responsibilities] services contract and who is precluded from  
10 performing construction.

11 C. "Construction manager at-risk" means a New  
12 Mexico licensed general contractor who acts as an agent of the  
13 state agency or local public body providing construction  
14 management services and who also acts as the general contractor  
15 entering contracts and assuming risks and responsibility for  
16 the construction project.

17 D. "Maximum allowable construction cost" means the  
18 total sum available for construction purposes, including all  
19 alternatives."

20 Section 2. Section 13-1-76 NMSA 1978 (being Laws 1984,  
21 Chapter 65, Section 49, as amended) is amended to read:

22 "13-1-76. DEFINITION-- PROFESSIONAL SERVICES. --

23 "Professional services" means the services of architects,  
24 [archeologists] archaeologists, engineers, surveyors, landscape  
25 architects, medical arts practitioners, scientists, management

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1 and systems analysts, certified public accountants, registered  
2 public accountants, lawyers, psychologists, planners,  
3 researchers, construction managers, construction mangers at-  
4 risk and other persons or businesses providing similar  
5 professional services, which may be designated as such by a  
6 determination issued by the state purchasing agent or a central  
7 purchasing office. "

8 Section 3. Section 13-1-100.1 NMSA 1978 (being Laws 1997,  
9 Chapter 171, Section 3) is amended to read:

10 "13-1-100.1. CONSTRUCTION CONTRACTS-- CONSTRUCTION  
11 MANAGEMENT SERVICES-- CONSTRUCTION MANAGER AT-RISK SERVICES. --

12 A. A construction management services contract or  
13 construction manager at-risk contract may be entered into for  
14 any construction or state or local public works project when a  
15 state agency or local public body makes a determination that it  
16 is in the public's interest to [~~utilize~~] use construction  
17 management services or construction manager at-risk services.  
18 Construction management services shall not duplicate and are in  
19 addition to the normal scope of separate architect or engineer  
20 contracts, the need for which may arise due to the complexity  
21 or unusual requirements of a project as requested by a state  
22 agency or local public body. A construction management  
23 services contract shall not require the construction manager to  
24 provide the bonds required under Section 13-4-18 NMSA 1978;  
25 however, surety bonds required under Section 13-4-18 NMSA 1978

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1 shall be provided by the contractors who are selected to  
2 provide the actual construction or purchasing services and  
3 whose contracts run to the state agency or local public body,  
4 and such bonds shall name the state agency or local public body  
5 as obligee. A construction manager at-risk contract entered  
6 into by a state agency or local public body may allow the  
7 construction manager at-risk to perform any work with its own  
8 work force; provided that such work is awarded in accordance  
9 with the Procurement Code. A construction manager at-risk  
10 contract entered into by a state agency or local public body  
11 shall specify a maximum allowable construction cost and  
12 performance schedule and shall include a provision to deliver  
13 performance and payment bonds in accordance with Section  
14 13-4-18 NMSA 1978.

15 B. To [~~insure~~] ensure fair, uniform, clear and  
16 effective procedures that will strive for the delivery of a  
17 quality project, on time and within budget, the secretary, in  
18 conjunction with the appropriate and affected professional  
19 associations and contractors, shall promulgate regulations,  
20 which shall be adopted by the governing bodies of all using  
21 agencies and shall be followed by all using agencies when  
22 procuring construction management services or construction  
23 manager at-risk services as authorized in Subsection A of this  
24 section.

25 C. A state agency shall make the decision on a

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1 construction management services contract or construction  
2 manager at-risk contract for a state public works project, and  
3 a local public body shall make that decision for a local public  
4 works project. A state agency shall not make the decision on a  
5 construction management services contract or construction  
6 manager at-risk contract for a local public works project. "

7 Section 4. A new section of the Procurement Code is  
8 enacted to read:

9 "[NEW MATERIAL] PUBLIC WORKS PROJECT DELIVERY SYSTEM -  
10 CONSTRUCTION MANAGER AT-RISK PROJECTS AUTHORIZED--MULTIPHASE  
11 PROCEDURE DESCRIBED--SELECTION COMMITTEE DESCRIBED--SELECTION  
12 PROCESS DESCRIBED. --

13 A. A construction manager at-risk delivery system  
14 may be authorized when a state agency or local public body  
15 makes a determination that it is in the public's interest to  
16 use the system on a specific project. The determination shall  
17 be issued in writing by the state agency or local public body  
18 only after the state agency or local public body has taken into  
19 consideration the following criteria, which shall be used as  
20 the minimum basis in determining when to use the construction  
21 manager at-risk delivery process:

22 (1) input of a construction manager at-risk  
23 during the design process will contribute to significant cost  
24 savings;

25 (2) time for delivery of the project is

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1 constrained;

2 (3) the project requires technical expertise  
3 best addressed by a cooperative approach with a construction  
4 manager at-risk working for the state agency or local public  
5 body and architect or engineer before construction begins and  
6 throughout the construction process;

7 (4) considering the capabilities and  
8 experience of potential construction managers at-risk with the  
9 construction manager at-risk delivery system and the benefits  
10 to be derived from using such professionals; and

11 (5) the capability of the state agency or  
12 local public body to manage the project.

13 B. A determination to use the construction manager  
14 at-risk delivery system issued by a state agency or local  
15 public body shall specify that the construction manager at-risk  
16 be a registered and licensed contractor holding a license for  
17 the type of work required and registration certificates  
18 indicating the ability to bid on public works projects.

19 C. All authorized construction manager at-risk  
20 projects shall use a multiphase procedure for awarding the  
21 construction manager at-risk contract and shall include at a  
22 minimum the procedures provided for in this section.

23 D. The state agency or local public body shall form  
24 a selection committee, consisting of three to five members,  
25 including at least one senior management employee of a licensed

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1 general contractor and at least one architect or engineer;  
2 provided that such members shall not be the owner's agents or  
3 involved in the design of the project. The selection committee  
4 shall develop an evaluation process to determine differences  
5 between persons seeking a construction manager at-risk  
6 contract, considering each phase of the selection process. The  
7 selection committee may require a multiphase procedure  
8 consisting of two or three steps. A two-step procedure shall  
9 include a request for qualifications and an interview. A  
10 three-step procedure shall consist of a request for  
11 qualifications, a request for proposals and an interview. The  
12 evaluation process using a two-step or three-step procedure  
13 shall include at a minimum a ranking of responses to the  
14 following criteria in the order listed:

- 15 (1) experience with the construction manager  
16 at-risk method;
- 17 (2) experience with construction of similar  
18 types of projects;
- 19 (3) qualifications and experience of the  
20 proposer's personnel and consultants and the role of each in  
21 the project;
- 22 (4) the plan for management actions to be  
23 undertaken on the project, including services to be rendered in  
24 connection with safety and the safety plan for the project; and  
25 (5) all other selection criteria.

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1           E. The decisions of the selection committee shall  
2 be final and shall not be subject to appeal except on grounds  
3 of fraud or collusion.

4           F. During the first phase of either a two-step or  
5 three-step procedure, and prior to solicitation, documents  
6 shall be prepared by an architect, engineer or construction  
7 manager, either in-house or selected in accordance with the  
8 provisions of Sections 13-1-120 through 13-1-124 NMSA 1978,  
9 which shall include:

- 10                           (1) minimum qualifications;
- 11                           (2) state contractor license;
- 12                           (3) state preference number;
- 13                           (4) bond capacity; and
- 14                           (5) scope of work statement to include:
  - 15                                   (a) location and maximum allowable  
16 construction cost;
  - 17                                   (b) schedule;
  - 18                                   (c) specific project requirements and  
19 deliverables;
  - 20                                   (d) the composition of the selection  
21 committee;
  - 22                                   (e) a description of the process the  
23 selection committee shall use to evaluate qualifications;
  - 24                                   (f) proposed contract, including a  
25 provision describing the apportionment of savings achieved

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1 below the maximum allowed construction cost or such other  
2 amount addressed in the contract; and

3 (g) a detailed statement of the  
4 relationships and obligations of all parties, including the  
5 construction manager at-risk, the architect or engineer and the  
6 state agency or local public body.

7 G. The state agency or local public body shall  
8 solicit qualifications from qualified construction manager at-  
9 risk proposers based on the documents described in Subsection F  
10 of this section. Public notice by a state agency or local  
11 public body of a request for qualifications shall be published  
12 in accordance with Section 13-1-104 NMSA 1978.

13 H. The selection committee shall evaluate the  
14 statements of qualifications submitted and interview the three  
15 highest-ranked proposers. Any decision of the selection  
16 committee, including a decision to invite fewer than three  
17 proposers to be interviewed, shall be final and shall not be  
18 subject to appeal except on grounds of fraud or collusion.  
19 Additionally, the selection committee may recommend termination  
20 of the selection procedure pursuant to Section 13-1-131 NMSA  
21 1978 and that new notices of solicitation be sent pursuant to  
22 Section 13-1-104 NMSA 1978. Any material received by the  
23 selection committee in response to a solicitation that is  
24 terminated shall not be disclosed so as to be available to  
25 competing proposers or offerors. Such decision shall not be

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1 subject to appeal except on grounds of fraud or collusion.

2 I. The selected proposers shall be invited to  
3 interview and may have persons who may be doing the work appear  
4 at the interview. During the interview of the highest-ranked  
5 proposers, the selection committee shall evaluate each of them  
6 based upon:

7 (1) experience with the construction manager  
8 at-risk method;

9 (2) experience with construction of similar  
10 types of projects;

11 (3) qualifications and experience of the  
12 proposer's personnel and the role of each in the project; and

13 (4) the plan for management actions to be  
14 undertaken on the project, including services to be rendered in  
15 connection with safety and the safety plan for the project.

16 J. The selection committee shall award the  
17 construction manager at-risk contract in accordance with  
18 Section 13-1-117 NMSA 1978. The selection committee shall make  
19 the names of all proposers and the names of all proposers  
20 selected for interview available for public inspection along  
21 with the selection committee's final ranking and evaluation  
22 scores. Proposers who were interviewed but not selected for  
23 contract award shall be notified in writing within fifteen days  
24 of the award. "

25 Section 5. A new section of the Procurement Code is

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1 enacted to read:

2 " [NEW MATERIAL] RESPONSIBILITIES OF CONSTRUCTION MANAGER  
3 AT-RISK FOLLOWING AWARD OF PROJECT. --

4 A. The project construction manager at-risk, in  
5 cooperation with the state agency or local public body, shall  
6 seek to develop subcontractor interest in the project and shall  
7 furnish to the owner and architect or engineer a list of  
8 subcontractors who state in writing that they are responsible  
9 as defined in Section 13-1-82 or 13-1-83 NMSA 1978, including  
10 suppliers who are to furnish materials or equipment fabricated  
11 to a special design and from whom proposals or bids will be  
12 requested for each principal portion of the project. The  
13 architect or engineer shall promptly reply in writing to the  
14 construction manager at-risk if the owner, architect or  
15 engineer knows of any objection to such subcontractor or  
16 supplier. The receipt of such list shall not require the  
17 owner, architect or engineer to investigate the qualifications  
18 of proposed subcontractors or suppliers, nor shall it waive the  
19 right of the owner, architect or engineer to later object to or  
20 reject any proposed subcontractor or supplier.

21 B. The construction manager at-risk shall specify  
22 the percentage of the maximum allowable construction cost the  
23 construction manager at-risk will perform with its own work  
24 force.

25 C. The construction manager at-risk shall:

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- 1 (1) conduct pre-bid meetings;
- 2 (2) advise the owner about the bidding or
- 3 proposals in accordance with the Procurement Code;
- 4 (3) enter into contracts;
- 5 (4) assist the owner in evaluations; and
- 6 (5) recommend to the owner the lowest
- 7 responsible bidder or proposer for each segment of the project.

8 D. The construction manager at-risk shall recommend  
9 to the owner a schedule for procurement of long-lead time items  
10 that shall constitute part of the project schedule. If long-  
11 lead time items are procured by the owner, they shall be  
12 procured on terms and conditions acceptable to the construction  
13 manager at-risk.

14 E. A construction manager at-risk contract shall  
15 consider any materials essential to the project that are  
16 experiencing or are expected to experience significant,  
17 industrywide economic fluctuation during construction of the  
18 project that may affect price, availability and delivery time  
19 frames. Such potentially time- and price-affected material  
20 shall be considered in a construction manager at-risk contract  
21 and provide a fair allocation of the risk of such market  
22 conditions on the project. In the event the construction  
23 manager at-risk is delayed at any time in the commencement or  
24 progress of the project due to a delay in the delivery or  
25 unavailability of a potentially time- and price-affected

1 material, beyond the control of and without the fault of the  
2 construction manager at-risk, its subcontractors or material  
3 suppliers, any affected party to the project shall be entitled  
4 to an equitable extension of the contract time and an equitable  
5 adjustment in the contract. "

6 Section 6. EFFECTIVE DATE. --The effective date of the  
7 provisions of this act is July 1, 2005.

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